

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY SIFUENTEZ,

Petitioner,

v.

UNKNOWN,

Respondent.

Case No. 2:21-cv-01244-WBS-JDP (HC)

ORDER:

(1) GRANTING PETITIONER'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS;

(2) DENYING AS MOOT HIS REQUEST
FOR EXTENSION OF TIME; AND

(3) FINDING THAT THE PETITION DOES
NOT STATE A COGNIZABLE CLAIM AND
GRANTING LEAVE TO AMEND WITHIN
SIXTY DAYS

ECF Nos. 4, 8, & 10

Petitioner, proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. I have reviewed the petition, and it appears that petitioner did not exhaust his claims before filing this case. I will give petitioner a chance to amend and confirm the status of his claims before recommending that this action be dismissed.

The amended petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that

1 the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir.
2 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

3 Petitioner raises numerous claims related to a September 2015 conviction. He states that,
4 after bringing his claims before the California Fifth District Court of Appeal, he did not pursue
5 them further in state court. ECF No. 10 at 3. Federal habeas claims must be exhausted by being
6 presented to the highest state court. *Castille v. Peoples*, 489 U.S. 346, 351 (1989). Here,
7 petitioner was required to put claims before the California Supreme Court. If petitioner's claims
8 are unexhausted, they may not proceed. He may file an amended petition that reasserts all his
9 claims and confirms their status with regard to exhaustion.

10 It is ORDERED that:

- 11 1. Petitioner's application to proceed *in forma pauperis*, ECF No. 4, is granted.
- 12 2. Petitioner's motion for extension of time to file a habeas petition, ECF No. 8, is
13 denied as moot.
- 14 3. Petitioner may file an amended petition within sixty days of this order's entry. If
15 he does not, I will recommend that the current petition be dismissed for the reasons stated in this
16 order.
- 17 4. The Clerk of Court is directed to send petitioner a federal habeas form.

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19 IT IS SO ORDERED.

20 Dated: September 8, 2021


21 JEREMY D. PETERSON
22 UNITED STATES MAGISTRATE JUDGE
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